



**Newsletter n. 13/2021**

**TAX LAW PROBLEMS LINKED TO THE PUBLICATION  
OF NAMES OF TAX EVADERS. THE BALANCE  
BETWEEN THE PROTECTION OF THE PRIVACY AND  
THE PUBLIC INTEREST WITHIN THE CEDU  
PRINCIPLES**

A recent judgement of the ECHR (12th January of 2021, nr. 36345/16, L.B. v. Hungary) dealt with some juridical problems linked to the publication of names of tax evaders.

Facts can be summarised as follows.

L.B. is an Hungarian national born and living in Budapest. In 2016, the Hungarian Tax Authority published on its website some of his personal data, including his name, home address, tax identification number and the amount of tax arrears. This measure was provided for by section 55(3) of Act no. XCII of 2003 on Tax Administration that required to public a list of tax evaders whose debt:

1. was recognised by a final decision;
2. was over 100 million HUF for juridic people and 10 million HUF for individuals, equivalent respectively to 300 thousand and 30 thousand euros;
3. existed from more than 180 consecutive days.

L.B considered this measure illegitimate and decided to appeal to the ECHR.

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Preliminary, the Court stated that the Tax Authority's liability was linked only to the publication on its website. Potential republications by third parties weren't attributable to it<sup>1</sup>.

The Court recognized the problems that such publication could

<sup>1</sup> This is an important clarification because personal information were disseminated by these subsequent republication.

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bring in relation to art. 8 of CEDU<sup>2</sup>. This rule provides the right to respect of private life, and the concept of “private life” and “personal data” certainly included the type and quality of information published by the Tax Authority. For these reasons the Court considered art. 8 of CEDU applicable to this case.

The Court’s analysis involved three different aspects aimed to verify if the Hungarian measure:

- a) was adopted **in accordance with the law**;
- b) had a **legitimate aim**;
- c) was **necessary in a democratic society** (in light of the proportionality principle).

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The first two requirements were quickly faced by the Court.

Firstly, the applicant did not deny the legal basis of the publication, and there was no doubt about that. This satisfied the requirement sub a).

Also the need of having a legitimate aim had been respected. As a matter of fact, the Court admitted that, in general, the impugned measure was able to protect the economic well-being of the State. This could be said both in relation to the payment of fiscal debts and the protection of people that could establish economic relation with tax evaders.

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The third aspect was the most difficult to sort out, because the Court had to define if the impugned measure was necessary in a democratic society.

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<sup>2</sup> Which states that

“1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*

2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*



The judges believed it was necessary to understand if the measure answered a “*pressing social need*” and, in particular, if it was proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it were “*relevant and sufficient*”.

The core issue was to clarify if the legislature acted within the margin of appreciation afforded to it, regarding to the *severity of the measure* and the *proportionality of its scope*.

In particular, the Court reminded that a wide margin is usually allowed to the State when general measures of economic or social strategy are involved. This margin becomes tight when the measure interests the private sphere of individuals or their fundamental rights.

To apply these concepts to the case, the Court had to find the just balance between the right to privacy of the individual and the public interest. This interest was divided (with a wide view of the interests took in account) into two categories:

- I) on one side, there would be the interest of the State of having an efficient collecting action (it would be necessary to understand if the measure had a concrete effect on lowering the tax evasion rate);
- II) on the other side, there would be the interest of third parties and potential commercial partners to know the real economic situation of tax evaders

The judges considered that the publication of a list of tax evaders was able to protect the cited interests, but only if the manner used were proportional to the aim pursued. Moreover, the Court stated that the temporal and quantitative limits provided by the Hungarian law were coherent and concerned only major tax evaders. Also the fact that the personal data were cancelled after



the payment of the tax debt, made the measure suited to the need of obtaining the owed taxes.

In relation to the *protection of privacy*, the presence, between the published information, of the home address (the most critical information) was necessary to avoid homonymy problems.

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At the end the Court had to decide if the publication on the internet was a proportionate measure to the aim pursued, because in this way anyone could potentially access to the personal data.

*In primis*, the Court considered this wide publication necessary to make the measure relevant; as a matter of fact, it was in line with the right of the public to be informed. The Court noticed that the publication of the information on the site of the Tax Authority did not make them more accessible to everyone, because they were published in a website that made it accessible only to who had interest to find them. The Court also gave importance to the structure of the site, which avoided that the measure could become a means of shaming the tax evaders (for example, it did not have a comments section under the list).

In the end, the judges – putting themselves on the point of view of the taxpayer – highlighted that the applicant did not provide proves about any potential consequence on his personal life.

The Court finally considered the measure proportionate to the aim pursued and in line with the margin afforded to the State.

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It is important to underline that two judges of the panel have drawn a so called “*Dissenting opinion*”.

In particular, they considered the publication of the home address, as well as the publication of the data on the website of the Government, not proportionate to scope of the measure. They also



did not share the limitation of liability of the Tax Authority only to the first publication on its website.

If the Court found a just balance between the interests involved, it is also true that this case-law could be modified in the future, depending on the importance in the democratic society of the different values considered.

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